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13 Attorneys for Plaintiff BERTHA DOMINGUEZ on
 13 behalf of herself and others similarly situated
 14

15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 BERTHA DOMINGUEZ, on behalf of herself and
 18 all others similarly situated,

19 Plaintiff,

20 v.

21 SONESTA INTERNATIONAL HOTELS
 22 CORPORATION., a Maryland corporation;
 22 and DOES 1 to 10, inclusive,

23 Defendant.

24 **CASE NO. 3:22-CV-03027-JCS**

25 **FIRST AMENDED CLASS ACTION**
COMPLAINT:

- 26 1. Failure to Pay Overtime Wages in Violation
 26 of Labor Code sections 510 and 1198;
- 27 2. Failure to pay all Wages and Minimum
 27 Wages in Violation of Labor Code sections
 27 1182, 1194, 1197, 1198;
- 28 3. Failure to Provide Meal Periods in Violation
 28 of Labor Code sections 226.7, 512, 516 and
 28 1198;
- 29 4. Failure to Provide Rest Periods in Violation
 29 of Labor Code sections 226.7, 516, 1198;
- 30 5. Failure to Timely Furnish Accurate
 30 Itemized Wage Statements in Violation of

Labor Code section 226(a);

6. Waiting Time Penalties Pursuant to Labor Code sections 201, 203;
7. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 204;
8. Failure to Provide Sick Pay in Violation of Labor Code section 246;
9. Violations of Business & Professions Code section 17200 et seq.;
10. Civil Penalties Pursuant to PAGA *Labor Code* §§ 2698, et seq.

DEMAND FOR JURY TRIAL

Complaint Filed : April 7, 2022

Removed to Federal Court : May 23, 2022

1 Plaintiff, BERTHA DOMINGUEZ (hereinafter “Plaintiff”) hereby submits her First
 2 Amended Complaint against Defendant SONESTA INTERNATIONAL HOTELS
 3 CORPORATION, a Maryland corporation; and DOES 1 to 10 (hereinafter referred to as
 4 “Defendant”) on behalf of herself and the class of all other similarly situated current and former
 5 employees of Defendant as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendant’s failure to provide their non-exempt
 8 employees with all wages including overtime, meal and rest periods in compliance with the
 9 applicable wage order and/or the California Labor Code, by failing to provide sick pay at the
 10 regular rate of pay, and by failing to comply with the applicable wage order and/or the Labor Code
 11 in regards to the payment of wages.

12 2. This is a law enforcement and representative action under the Private Attorneys
 13 General Act of the California Labor Code, arising out of Defendant’s failure to provide their non-
 14 exempt employees with all wages including overtime, meal and rest periods in compliance with the
 15 applicable wage order and/or the California Labor Code, by failing to provide sick pay at the
 16 regular rate of pay, and by failing to comply with the applicable wage order and/or the Labor Code
 17 in regards to the payment of wages.

18 3. Sonesta International Hotels Corporation is an American hotel company
 19 headquartered in Newton, Massachusetts. Sonesta has several brands including, Royal Sonesta,
 20 Sonesta, Sonesta Select, Sonesta ES Suites, Sonesta Hotels & Resorts, Sonesta Simply Suites,
 21 Sonesta Posadas del Inca and Sonesta Cruise Collection.

22 4. At all relevant times, Defendant issued and maintained uniform, standardized
 23 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in
 24 California, including Plaintiff and others similarly situated, regardless of their location or position.

25 5. Defendant has maintained practices across its locations which have failed and
 26 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendant
 27 has a company-wide policy of failing to accurately record overtime, and subjecting Plaintiff and
 28 other non-exempt employees to work off-the-clock.

1 6. Defendant's failure to properly staff its facilities has resulted in a lack of meal
2 period and rest period coverage and prevented Plaintiff and other non-exempt employees from
3 taking compliant meal and rest periods. Moreover, Defendant fails and has failed to include
4 incentive pay and service award pay when calculating the regular rate of pay.

5 7. In light of the foregoing, Defendant has failed to provide Plaintiff and other non-
6 exempt employees with compliant wage statements and failed to timely pay wages during
7 employment and final wages upon termination or separation from employment.

8 8. Defendant also had a practice of failing to provide Plaintiff and other non-exempt
9 employees with sick pay at the regular rate of pay.

10 9. Plaintiff brings Causes of Action One through Nine (the “class claims”) as a class
11 action on behalf of herself and other similarly situated individuals who have worked for Defendant
12 in California, at any time from four-years prior to the filing of this complaint, through the resolution
13 of this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class
14 claims pursuant to Labor Code sections 200-203, 204, 221, 223, 226, 226.7, 246, 500, 510, 512,
15 516, 1174, 1194, 1194.2, 1197, 1198, the applicable wage order and under Business & Professions
16 Code sections 17200-17208, for unfair competition due to Defendant’s unlawful, unfair and
17 fraudulent business acts and practices.

18 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
19 engaged in, among other things a system of willful violations of the Labor Code and the applicable
20 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
21 employees the above stated rights and benefits.

PARTIES

23 11. Plaintiff, Bertha Dominguez is an individual over the age of eighteen (18) and is
24 now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the
25 State of California. During the relevant time period, Plaintiff worked for Defendant in San Bruno,
26 California from approximately November 2020 through approximately January 7, 2022. Plaintiff
27 worked at Sonesta ES Suites San Francisco Airport. Plaintiff worked as a
28 housekeeper/housekeeping supervisor. Her job duties included but were not limited to, cleaning

1 hotel rooms. Plaintiff earned approximately \$23.95 per hour.

2 12. Plaintiff is informed and believes, and based thereon alleges, that SONESTA
3 HOTELS INTERNATIONAL CORPORATION, is a Maryland corporation. Plaintiff is further
4 informed and believes that at all times relevant hereto, Defendant has transacted, and continues to
5 transact, business throughout the State of California.

6 13. Plaintiff is informed and believes, and based upon such information and belief
7 alleges, that Defendant is, now and/or at all times mentioned in this Complaint was in some manner
8 legally responsible for the events, happenings and circumstances alleged in this Complaint.

9 14. Plaintiff is further informed and believes, and based upon such information and
10 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
11 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
12 complaints, injuries and/or damages alleged in this Complaint.

13 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
14 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
15 individuals, and partnerships, licensed to do business and actually doing business in the State of
16 California.

17 16. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
19 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and members of the general public and
23 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

24 17. At all times herein mentioned, each of said Defendants participated in the doing of
25 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants and employees of each of the other
27 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
28 within the course and scope of said agency and employment.

18. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

19. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

21. The members of the Classes (as defined below), including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

22. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the California Constitution and Code of Civil Procedure section 410.10.

23. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for injunctive relief, including restitution of earned wages, arising from Defendant's unfair competition under Business & Professions Code section 17203 and 17204. The Court also has jurisdiction over Plaintiff's and the Class' claims pursuant to the applicable provisions.

24. The Court has jurisdiction over Defendant because it is authorized to do business in

1 the State of California and is registered with the California Secretary of State. Defendant does
 2 sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally
 3 avails itself of the California market through the advertising, marketing and sale of goods and
 4 services, to render the exercise of jurisdiction over Defendant by the California court consistent
 5 with traditional notions of fair play and substantial justice.

6 25. Venue is proper in San Mateo County because the acts which give rise to this
 7 litigation occurred in this county and because Defendant has employed class members in this
 8 county and transacts business in this county.

9 **FACTUAL ALLEGATIONS**

10 26. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

11 27. Defendant has engaged in, and continues to engage in, unfair business practices in
 12 California by practicing, employing and utilizing the employment practices and policies outlined
 13 above.

14 28. As a direct result of the wage and hour violations herein alleged, Plaintiff and
 15 members of the Classes have suffered, and continue to suffer substantial losses related to the use
 16 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
 17 to compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective
 18 damage in amounts according to proof at the time of trial.

19 ***Defendant's Failure to Pay Overtime Wages***

20 29. During the Class Period, upon information and belief, Defendant had, and continues
 21 to have, a company-wide policy of failing to pay Plaintiff and members of the Classes all overtime
 22 wages.

23 30. Specifically, California Labor Code section 510 provides that "Any work in excess
 24 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
 25 for an employee." However, Defendant failed to pay Plaintiff and members of the Classes twice the
 26 regular rate of pay.

27 31. By way of example, on Plaintiff's pay statement with the pay date of 12/23/21 she
 28 was paid \$47.50. However, she should have been paid \$47.90, which is twice her rate of pay when

1 working in excess of 12 hours.

2 32. Moreover, Defendant's company-wide policy resulted in a failure to provide
 3 Plaintiff and members of the Classes with adequate meal period coverage. Further, Plaintiff and
 4 members of the Classes were not relieved of their duties during meal periods. As a result, Plaintiff
 5 and other non-exempt employees continued to work during meal periods, because they were
 6 required to keep their walkie-talkie on. Thus, Plaintiff and members of the Classes performed work
 7 during meal periods for which they were not paid. Defendant knew or should have known that as a
 8 result of these company-wide practices and/or policies, Plaintiff and members of the Classes were
 9 performing assigned duties off-the-clock during meal periods, and were suffered or permitted to
 10 perform work for which they were not paid. Because Plaintiff and members of the Classes worked
 11 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
 12 clock work qualified for overtime premium pay.

13 33. Therefore, Plaintiff and members of the Classes were not paid overtime wages for
 14 all of the overtime hours they actually worked.

15 ***Defendant's Failure to Pay all Wages and Minimum Wages***

16 34. As stated above, during the relevant time period, as a result of Defendant's policy of
 17 limiting the amount of overtime employees could accrue, and continuing to work during meal
 18 breaks, Plaintiff and other non-exempt employees were forced to work off-the-clock.

19 35. To the extent that these off-the-clock hours did not qualify for overtime premium
 20 payment, Defendant did not pay at least minimum wages for those hours worked off-the-clock.

21 ***Defendant's Failure to Provide Compliant Meal Periods***

22 36. As stated above, Defendant had, and continues to have, a company-wide policy
 23 and/or practice of preventing Plaintiff and members of the Classes from taking all timely,
 24 uninterrupted meal periods to which they were entitled. As a result, Plaintiff and members of the
 25 Classes were forced to work in excess of five (5) hours before taking a meal period and, at times,
 26 had their meal periods interrupted, and/or had to forgo their meal periods altogether.

27 37. For example, Plaintiff always had to have her walkie-talkie on during her meal
 28 breaks and was frequently interrupted. Further, Defendant failed to provide a meal period for every

1 five hours worked. Specifically, Plaintiff would regularly work 10 to 12 hour shifts and would not
 2 be provided with a second meal period. Moreover, upon information and belief, Defendant failed to
 3 provide meal premiums for each meal break that was interrupted. Additionally, the meal premiums
 4 that were paid to Plaintiff and members of the Classes were not paid at the regular rate of pay.
 5 Plaintiff and members of the Classes did not sign valid meal period waivers on days that they were
 6 entitled to meal periods and were not relieved of all duties.

7 ***Defendant's Failure to Provide Compliant Rest Breaks***

8 38. During the relevant time period, Defendant regularly failed to authorize and permit
 9 Plaintiff and other non-exempt employees to take a ten (10) minute rest period per each four (4)
 10 hour period worked or major fraction thereof.

11 39. Specifically, Plaintiff alleges that she would regularly work 12 hour shifts and
 12 would not be provided with a third rest break. When Defendant did provide rest breaks, only 10
 13 minutes of rest were provided, which did not account for the time it took Plaintiff and members of
 14 the Classes to walk to and from the break room. Moreover, when rest premiums were paid,
 15 Defendant did not pay the premiums at the regular rate of pay, and were instead paid at the base
 16 rate of pay.

17 ***Defendant's Failure to Provide Sick Pay***

18 40. Defendant underpaid sick pay wages to Plaintiff and members of the Classes by
 19 failing to pay such wages at the regular rate of pay in violation of Labor Code Section 246.
 20 Specifically, Plaintiff and other non-exempt employees earn incentive pay. Rather than pay sick
 21 pay at the regular rate of pay, Defendant underpaid sick pay to Plaintiff and members of the
 22 Classes at their base rates of pay.

23 ***Defendant's Failure to Provide Compliant Wage Statements***

24 41. During the relevant time period, Defendant has knowingly and intentionally
 25 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
 26 statements. For example, Defendant issued uniform wage statements to Plaintiff and other non-
 27 exempt employees that fail to correctly list: gross wages earned; total hours worked; net wages
 28 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for

1 overtime wages and/or meal and rest period premiums, and the corresponding number of hours
 2 worked at each hourly rate.

3 42. Because Defendant did not record the time Plaintiff and other non-exempt
 4 employees spent working off-the-clock and deducted time from their meal periods that were
 5 interrupted (and therefore time for which they should have been paid), Defendant did not list the
 6 correct amount of gross wages and net wages earned by Plaintiff and other non-exempt employees
 7 in compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

8 43. For the same reason, Defendant failed to accurately list the total number of hours
 9 worked by Plaintiff and members of the Classes, and failed to list the applicable hourly rates of pay
 10 in effect during the pay period and the corresponding accurate number of hours worked at each
 11 hourly rate.

12 44. Because Defendant failed to provide the correct net and gross wages earned,
 13 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
 14 members of the Classes have been prevented from verifying, solely from information on the wage
 15 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
 16 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
 17 time records to determine whether in fact they were paid correctly and the extent of underpayment,
 18 thereby causing them injury.

19 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

20 45. Defendant willfully failed to pay Plaintiff and members of the Classes who are no
 21 longer employed by Defendant the earned and unpaid wages set forth above, including but not
 22 limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the time
 23 of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

24 46. Specifically, Defendant provided Plaintiff her final check for the period of 12/19/21-
 25 1/1/22 on 1/10/22.

26 ***Defendant's Failure to Timely Pay Wages During Employment***

27 47. Labor Code section 204 requires that all wages earned by any person in any
 28 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 16th and the 26th
 2 day of the month during which the labor was performed, and that all wages earned by any person in
 3 any employment between the 16th and the last day, inclusive, of any calendar month, other than
 4 those wages due upon termination of an employee, are due and payable between the 1st and the
 5 10th day of the following month.

6 48. Labor Code section 204 also requires that all wages earned for labor in excess of the
 7 normal work period shall be paid no later than the payday for the next regular payroll period.
 8 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
 9 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
 10 paid not more than seven (7) calendar days following the close of the payroll period.

11 49. During the class period, Defendant willfully failed to pay Plaintiff and members of
 12 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
 13 period premiums, within the time periods specified by Labor Code section 204.

14 50. Further, Defendant provided Plaintiff her final check for the period of 12/19/21-
 15 1/1/22 on 1/10/22.

16 ***Facts Regarding Willfulness***

17 51. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
 18 was advised by skilled lawyers, other professionals, employees with human resources background
 19 and advisors with knowledge of the requirements of California wage and hour laws and that at all
 20 relevant times, Defendant knew or should have known, that the members of the Classes, including
 21 Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of compensation
 22 for each day that a meal and/or rest period was not provided and were and are entitled to received
 23 pay for all hours worked, accurate itemized wage statements, and final pay in a timely manner.

24 ***Unfair Business Practices***

25 52. Defendant has further engaged in, and continue to engage in, unfair business
 26 practices in California by practicing, employing and utilizing the unlawful employment practices
 27 and policies outlined above.

28 53. As a direct result of the wage and hour violations herein alleged, Plaintiff and

1 members of the Classes have suffered, and continue to suffer substantial losses related to the use
 2 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
 3 to compel Defendant to perform their obligations under state law, all to Plaintiff's and members of
 4 the Classes' respective damage in amounts according to proof at the time of trial.

5 ***Plaintiff's Exhaustion of Administrative Remedies***

6 54. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
 7 section 2699.3.

8 55. By letter dated April 7, 2022, required notice was provided to Labor and Workforce
 9 Development Agency ("LWDA") and Defendant, of the specific provisions of the Labor Code
 10 alleged to have been violated, including the facts and theories to support the alleged violations.

11 56. More than sixty-five (65) days have passed since the date the notice was mailed to
 12 Defendant and the LWDA, and the LWDA has not responded.

13 **CLASS ACTION ALLEGATIONS**

14 57. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

15 58. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
 16 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
 17 commonality, typicality, adequacy, predominance, and superiority requirements of those
 18 provisions.

19 59. Plaintiff brings this suit as a class action on behalf of two classes of individuals
 20 defined as follows (collectively the "Classes"):

21 60. *Plaintiff Class:* All persons who have been, or currently are, employed by Defendant
 22 and who held, or hold, job positions which Defendant has classified as "non-exempt" employees in
 23 the State of California, at any time since four years prior to filing this action, through the date
 24 judgment is rendered in this action.

25 61. *Terminated Sub Class:* All members of the Plaintiff Class whose employment ended
 26 during the Class Period.

27 62. *Numerosity:* Plaintiff is informed and believes, and on that basis alleges, that during
 28 the class period hundreds of class members have been employed by Defendant as non-exempt

1 employees in the State of California. Because so many persons have been employed by Defendant
 2 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
 3 impossible and/or impracticable.

4 63. *Common Questions of Law and/or Fact:* Common questions of law and fact exist as
 5 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
 6 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
 7 adjudication of Class Members' claims are as follows:

- 8 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
 9 California wage and hour statutes;
- 10 b. Whether Defendant failed to pay Plaintiff and Class Members for all hours worked;
- 11 c. Whether Defendant failed to pay Plaintiff and Class Members all overtime;
- 12 d. Whether Defendant had a standard policy of not providing compliant meal breaks
 13 and premiums to Plaintiff and members of the Classes;
- 14 e. Whether Defendant had a standard policy of not providing compliant rest breaks and
 15 premiums to Plaintiff and members of the Classes;
- 16 f. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and
 17 members of the Classes with true and proper wage statements upon payment of
 18 wages, in violation of Labor Code section 226;
- 19 g. Whether Defendant unlawfully and/or willfully failed to timely pay Plaintiff and
 20 members of the Classes all wages during employment;
- 21 h. Whether Defendant unlawfully and/or willingly failed to timely pay Plaintiff and the
 22 Terminated Sub Class upon termination;
- 23 i. Whether Defendant failed to pay compliant sick pay to Plaintiff and members of the
 24 Classes;
- 25 j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
 26 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
 27 fees, and equitable relief;
- 28 k. Whether Defendant's conduct as alleged herein violates the Unfair Business

1 Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

2 64. Typicality: The claims of the named Plaintiff are typical of the claims of the
 3 members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their
 4 non-exempt employees with all wages and meal and rest periods and all wages in compliance with
 5 the applicable wage order, or premium compensation at the regular rate in lieu thereof, failing to
 6 pay compliant sick pay wages, and failing to provide them with compliant wage statements has
 7 caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages.
 8 Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed
 9 Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising
 10 from Defendant's common policies, practices, procedures, protocols, routines, and rules which
 11 were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type
 12 of losses, injuries, and damages as were suffered by other members of the proposed class.

13 65. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
 14 classes because she is a member of the class, and her interests do not conflict with the interests of
 15 the members she seeks to represent. Plaintiff has retained competent counsel, experienced in the
 16 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
 17 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
 18 adequately be protected by Plaintiff and her attorneys.

19 66. Superiority of Class Action: A class action is superior to other available methods for
 20 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
 21 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
 22 to proceed on an individual basis, because this would potentially result in hundreds of individuals,
 23 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
 24 contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable
 25 allocation of recovery among those with equally meritorious claims. By contrast, the class action
 26 device presents far fewer management difficulties, and provides the benefit of a single
 27 adjudication, economics of scale, and comprehensive supervision by a single court.

28 67. The various claims asserted in this action are additionally or alternatively certifiable

1 under the provisions of the Code of Civil Procedure section 382 because:

2 a. The prosecution of separate actions by hundreds of individual class members would
3 create a risk of varying adjudications with respect to individual class members, thus establishing
4 incompatible standards of conduct for Defendant, and

5 b. The prosecution of separate actions by individual class members would also create
6 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the
7 interest of the other class members who are not a party to such adjudications and would
8 substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Unpaid Overtime

(By Plaintiff and Members of the Putative Class Against Defendant)

12 68. Plaintiff incorporates herein by reference the allegations set forth above.

13 69. At all times relevant herein, which comprise the time period not less than four (4)
14 years preceding the filing of this action, Defendant was required to compensate their hourly
15 employees for all overtime hours worked.

16 70. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
17 Commission (“IWC”) wage order require employers to pay employees working more than eight (8)
18 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½)
19 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than
20 forty (40) hours in a workweek. The applicable IWC wage order further provides that employers
21 are required to pay employees working more than twelve (12) hours in a day overtime
22 compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay
23 includes all remuneration for employment paid to, or on behalf of, the employee, including
24 nondiscretionary bonuses and incentive pay.

25 71. Defendant willfully failed to pay all overtime wages owed to Plaintiff and members
26 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
27 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
28 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Specifically,

1 Defendant failed to pay Plaintiff and members of the Classes twice the regular rate of pay. By way
2 of example, on Plaintiff's pay statement with the pay date of 12/23/21 she was paid \$47.50.
3 However, she should have been paid \$47.90, which would have been two times her rate of pay.

4 72. Moreover, Defendant's company-wide policy resulted in a failure to provide
5 Plaintiff and members of the Classes with adequate meal period coverage, causing Plaintiff and
6 members of the Classes to not be relieved of their duties for compliant meal periods. As a result,
7 Plaintiff and members of the Classes were required to keep their walkie-talkies on and frequently
8 had to work during their meal breaks. Thus, Plaintiff and members of the Classes performed work
9 during meal periods for which they were not paid. Defendants knew or should have known that as a
10 result of these company-wide practices and/or policies, Plaintiff and members of the Classes were
11 performing assigned duties off-the-clock during meal periods, and were suffered or permitted to
12 perform work for which they were not paid. Because Plaintiff and members of the Classes worked
13 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
14 clock work qualified for overtime premium pay.

15 73. Defendant's failure to pay Plaintiff and members of the Classes the balance of
16 overtime compensation, as required by California law, violates the provisions of Labor Code
17 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
18 attorney's fees, costs, and interest thereon.

SECOND CAUSE OF ACTION

Failure to Pay All Wages

(By Plaintiff and Members of the Putative Class Against Defendant)

22 74. Plaintiff incorporates herein by reference the allegations set forth above.

23 75. At all times relevant herein, which comprise the time period not less than four (4)
24 years preceding the filing of this action, Defendant was required to compensate their hourly
25 employees for all hours worked.

26 76. For at least the four (4) years preceding the filing of this action, Defendant failed to
27 compensate employees for all hours worked. Defendant implemented policies that actively
28 prevented employees from being compensated for all time worked by subjecting Plaintiff and

1 members of the Classes to work off-the-clock as mentioned above.

2 77. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
 3 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
 4 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
 5 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
 6 206.

7 78. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
 8 time during which an employee is subject to the control of an employer and includes all the time
 9 the employee is suffered or permitted to work, whether or not required to do so."

10 79. Defendant suffered or permitted Plaintiff and members of the Classes to work
 11 portions of the day for which Defendant failed to compensate them. This includes time spent under
 12 Defendant's control during meal periods.

13 80. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
 14 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
 15 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
 16 ... including interest thereon, reasonable attorney's fees, and costs of suit."

17 81. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
 18 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
 19 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
 20 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

21 82. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
 22 commission is the minimum wage to be paid to employees, and the payment of a less wage than
 23 the minimum so fixed is unlawful."

24 83. Plaintiff is informed and believes, and therefore alleges, that Defendant's
 25 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
 26 spent performing their job duties.

27 84. For example, Defendant required Plaintiff to keep her walkie-talkie on during meal
 28 breaks so that she could communicate with management and other team members. Consequently,

1 Plaintiff and members of the Classes performed work during meal periods for which they were not
2 paid. Defendant knew or should have known that as a result of these company-wide practices
3 and/or policies, Plaintiff and members of the Classes were performing assigned duties off-the-clock
4 during meal periods, and were suffered or permitted to perform work for which they were not paid.

5 85. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
6 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
7 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

8 86. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
9 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
10 wage order section 3; and Business & Professions Code.

11 87. During the applicable time period, Defendant has and continues to have a pattern
12 and practice of not providing its employees all wages, by failing to include all compensable time,
13 including time worked off-the-clock.

14 88. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
15 Class have been damaged in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

Non-Compliant Meal Breaks

(By Plaintiff and Members of the Putative Class Against Defendant)

19 89. Plaintiff hereby incorporates by reference each and every one of the allegations
20 contained in the preceding paragraphs as if the same were fully set forth herein.

21 90. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
22 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
23 not less than thirty (30) minutes without duty.

24 91. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
25 routinely failed to provide Plaintiff and the members of the Classes with such meal periods without
26 duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their
27 right to the same. Thus, Defendant failed to provide Plaintiff and the members of the Classes with
28 meal periods required by Labor Code sections 226.7, 512, 516 and the applicable IWC wage order

1 section 10, and categorically failed to pay any and all meal period wages due.

2 92. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
 3 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at
 4 the regular rate for each work day that the meal period is/was not provided to Plaintiff and any
 5 member of the Classes, the cumulative sum of which is to be determined at trial.

6 93. Under the foregoing, California employers must provide meal periods and authorize
 7 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
 8 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
 9 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
 10 related duties,” including the duty to remain “on call,” and they must be “free from employer
 11 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
 12 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
 13 (2012) 53 Cal.4th 1004, 1038-39.

14 94. When employees must either “remain at the ready and capable of being summoned
 15 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
 16 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
 17 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
 18 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

19 95. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
 20 rest break cases that have affirmed California’s broad, protective standard for employees.¹

21 96. Moreover, as the mere existence of a facially lawful meal and rest break policy is
 22 unavailing if there are practical constraints and pressures on employees to perform their duties in
 23 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

24

25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v. Wackenhut Corp.* (2016) 5 Cal.App.5th 926, rehg. denied (Dec. 14, 2016); *Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug. 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to “remain in contact with supervisors and other employees working in their units throughout their shifts... would appear to be unlawful under [Augustus.]”)

1 97. Yet Defendant did and does not provide Plaintiff and members of the Classes with
 2 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
 3 the fifth hour of work and again by the tenth hour of work.

4 98. Rather, Plaintiff and members of the Classes' meal periods were typically
 5 interrupted as Plaintiff and members of the Classes were required to have their walkie-talkies on
 6 during meal periods. Moreover, Defendant failed to provide Plaintiff and members of the Classes
 7 with second meal breaks by the tenth hour worked.

8 99. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the
 9 members of the Classes with off-duty meal periods by the end of the fifth hour of work and a
 10 second meal period by the end of the tenth hour of work. Defendant has also failed to pay Plaintiff
 11 and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-duty meal
 12 period, as Defendant failed to consider Plaintiff's and members of the classes' incentive pay in the
 13 calculation.

14 100. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
 15 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
 16 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
 17 employee's "regular rate of pay" instead of their base hourly rate. Defendant fails and has failed to
 18 include incentive pay and service award pay when calculating the regular rate, and instead pays
 19 meal break premiums at the base rate.

20 101. Defendant knew or should have known that as a result of its policies and/or
 21 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
 22 timely, uninterrupted meal periods. Defendant further knew or should have known that it did not
 23 pay Plaintiff and members of the Classes all meal period premiums when meal periods were
 24 missed, late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide
 25 practice and/or policy of not paying meal period premiums at the regular rate when compliant meal
 26 periods are not provided. Because of this practice and/or policy, Plaintiff and members of the
 27 Classes have not received all premium pay for missed, interrupted, or late meal periods.
 28 Accordingly, Defendant failed to provide all meal periods in violation of Labor Code sections

1 226.7, 512(a), 516, and 1198.

2 102. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
3 costs, and interest thereon.

4 **FOURTH CAUSE OF ACTION**

5 **Non-Compliant Rest Breaks**

6 **(By Plaintiff and Members of the Putative Class Against Defendant)**

7 103. Plaintiff hereby incorporates by reference each and every one of the allegations
8 contained in the preceding paragraphs as if the same were fully set forth herein.

9 104. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
10 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
11 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
12 Code section 226.7 provides that no employer shall require an employee to work during any rest
13 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
14 “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period” and that the “rest period time shall be based
16 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
17 major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.
18 When Defendant did provide rest breaks, only 10 minutes of rest were provided, which did not
19 account for the time it took Plaintiff and members of the Classes to walk to and from the break
20 room.

21 105. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class
22 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
23 and every four (4) hours or major fraction thereof worked during the workday. Specifically,
24 Plaintiff regularly worked 10 to 12 hour shifts and did not receive third rest breaks. Moreover, rest
25 break premiums were not paid at the regular rate of pay pursuant to *Ferra v. Loews Hollywood*
26 *Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must pay
27 premium payments to employees for missed meal, rest, and recovery breaks at the employee's
28 “regular rate of pay” instead of their base hourly rate. Specifically, Defendant fails and has failed to

1 include incentive pay and service award pay when calculating the regular rate, and instead pays rest
2 break premiums at the base rate.

3 106. Plaintiff is informed and believes, and thereon alleges, that Defendant routinely
4 failed to provide Plaintiff and the members of the Classes with such paid rest periods without duty,
5 notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to
6 the same. Thus, Defendant failed to provide Plaintiff and Class Members with rest periods required
7 by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order section 11 and
8 categorically failed to pay any and all rest period wages due.

9 107. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and
10 the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the
11 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff
12 and any member of the Classes, the cumulative sum of which is to be determined at trial.

13 108. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
14 for Defendant's failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
15 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

(By Plaintiff and Members of the Putative Class Against Defendant)

19 109. Plaintiff hereby incorporates by reference each and every one of the allegations
20 contained in the preceding paragraphs as if the same were fully set forth herein.

110. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

111. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates

1 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
 2 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
 3 the employer fails to provide the employee a wage statement or fails to keep the required records
 4 pursuant to section 226(a).

5 112. Defendant knowingly and intentionally failed to furnish Plaintiff and the members
 6 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
 7 the applicable IWC Wage order section 6(B).

8 113. Plaintiff is informed and believes, and thereon alleges, that Defendant knowingly
 9 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
 10 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
 11 applicable hourly rates in effect during each respective pay period and the corresponding number
 12 of hours worked at each hourly rate by each respective individual.

13 114. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
 14 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
 15 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
 16 missing hours worked, and missed meal and rest-break premiums, as illustrated above.

17 115. As a result of not having kept accurate records, Plaintiff and the Class Members
 18 suffered injuries in the form of confusion over whether they received all wages owed to them, and
 19 difficulty and expense in reconstructing pay records in addition to other injuries which may come
 20 to light during the discovery process.

21 116. Labor Code section 1198 provides that the maximum hours of work and the
 22 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
 23 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
 24 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
 25 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
 26 accurate time records showing when the employee begins and ends each work period and meal
 27 period.

28 117. During the relevant time period, Defendant failed, on a company-wide basis, to keep

1 accurate records of work and meal period start and stop times for Plaintiff and members of the
 2 Classes, in violation of Labor Code section 1198. Also, as stated, Defendant engaged in a
 3 company-wide practice and/or policy of falsifying Plaintiff's and members of the Classes' time
 4 records by recording that compliant meal periods were taken regardless of if compliant meal
 5 periods were actually taken, and thereby failed to keep accurate records of meal start and end times
 6 for Plaintiff and members of the Classes.

7 118. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
 8 to Labor Code section 226(e) for Defendant's violations of Labor Code section 226(a).

9 119. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
 10 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

11 **SIXTH CAUSE OF ACTION**

12 **Waiting Time Penalties**

13 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

14 120. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
 15 forth herein.

16 121. At all times, relevant herein, Defendant was required to pay their employees all
 17 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
 18 sections 201-203.

19 122. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the
 20 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
 21 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

22 123. Labor Code sections 201 and 202 provide that if an employer discharges an
 23 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
 24 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
 25 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
 26 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
 27 entitled to his or her wages at the time of quitting.

28 124. On information and belief, Defendant has a company-wide practice or policy of

1 paying departing employees their final wages late, instead of adhering to the time requirements set
2 forth in Labor Code sections 201 and 202.

3 125. Specifically, Defendant willfully failed to pay Plaintiff and members of the
4 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
5 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
6 discharge, or within seventy-two (72) hours of their leaving Defendant's employ. Further,
7 Defendant provided Plaintiff her final check for the period of 12/19/21- 1/1/22 on 1/10/22.

8 126. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
9 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

SEVENTH CAUSE OF ACTION

Failure to Timely Pay Wages During Employment

(By Plaintiff and Members of the Putative Class Against Defendant)

13 127. Plaintiff hereby incorporates by reference each and every one of the allegations
14 contained in the preceding paragraphs as if the same were fully set forth herein.

15 128. Labor Code section 204 requires that all wages earned by any person in any
16 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th
18 day of the month during which the labor was performed, and that all wages earned by any person in
19 any employment between the 16th and the last day, inclusive, of any calendar month, other than
20 those wages due upon termination of an employee, are due and payable between the 1st and the
21 10th day of the following month.

22 129. Labor Code section 204 also requires that all wages earned for labor in excess of the
23 normal work period shall be paid no later than the payday for the next regular payroll period.
24 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
25 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
26 paid not more than seven (7) calendar days following the close of the payroll period.

27 130. During the class period, Defendant willfully failed to pay Plaintiff and members of
28 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest

1 period premiums, within the time periods specified by Labor Code section 204. Further, Defendant
2 provided Plaintiff her final check for the period of 12/19/21- 1/1/22 on 1/10/22, more than seven
3 (7) calendar days following the close of payroll.

4 131. As a proximate result of the above-mentioned violations. Plaintiff and members of
5 the Classes have been damaged in an amount according to proof at time of trial.

EIGHTH CAUSE OF ACTION

Failure to Provide Sick Pay at the Regular Rate

(By Plaintiff and Members of the Putative Class Against Defendant)

9 132. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
10 forth herein.

11 133. A component of Plaintiff's and other Class Members' compensation was
12 Defendant's non-discretionary incentive program that paid Plaintiff and members of the Classes
13 incentive wages based on their performance for Defendant. The non-discretionary incentive
14 program provided all employees paid on an hourly basis with incentive compensation when the
15 employees met the various performance goals set by Defendant. However, when calculating the
16 regular rate of pay in order to pay sick pay to Plaintiff and members of the Classes, Defendant
17 failed to include the incentive compensation as part of the employees' "regular rate of pay" for
18 purposes of calculating sick pay. As a matter of law, the incentive compensation received by
19 Plaintiff and members of the Classes must be included in the "regular rate of pay." The failure to
20 do so has resulted in an underpayment of sick pay to Plaintiff and members of the Classes.

134. Defendant underpaid sick pay wages to Plaintiff and members of the Classes by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, Plaintiff and members of the Classes earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of pay, Defendant underpaid sick pay to Plaintiff and members of the Classes at their base rates of pay.

135. 13. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of

1 || employment.

2 136. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
3 regular rate of pay. Plaintiff and members of the Classes routinely earned non-discretionary
4 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was
5 paid at the base rate of pay for Plaintiff and members of the Classes, as opposed to the correct,
6 higher regular rate of pay, as required under Cal. Lab. Code Section 246.

7 137. Plaintiff and members of the Classes are entitled to recover civil penalties,
8 attorney's fees, costs, and interest thereon.

NINTH CAUSE OF ACTION

Violation of California

Business and Professions Code Section 17200 et seq.

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

13 138. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
14 forth herein.

15 139. Business and Professions Code section 17200 defines unfair competition to include,
16 “unlawful, unfair or fraudulent business practices.”

17 140. Plaintiff and all proposed Class Members are “persons within the meaning of
18 Business and Professions Code section 17204, who have suffered injury in fact and have lost
19 money or property as a result of Defendant’s unfair competition.

20 141. Defendant has been committing, and continues to commit, acts of unfair
21 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
22 described in this Complaint, including, but not limited to:

- a) violations of Labor Code sections 510, 1198;
- b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- d) violations of Labor Code sections 226, 1174;
- e) violations of Labor Code sections 201 and 202;
- f) violations of Labor Code section 204;

- g) violations of Labor Code section 246;
- h) violations of Labor Code section 223;
- i) violations of Labor Code section 1198

142. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendant has reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct has also enabled Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

143. Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

144. Plaintiff seeks a court order enjoining Defendant from the unlawful, unfair, and/or fraudulent activity alleged herein.

145. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

146. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to herself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

147. Plaintiff seeks restitution for herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

REPRESENTATIVE ALLEGATION

TENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against All Defendants)

148. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth

1 herein, the allegations contained above.

2 149. Plaintiff asserts claims for civil penalties as representatives of the State of
 3 California, as authorized by the Private Attorneys General Act (“PAGA”), Labor Code section
 4 2698, *et seq.*, and to the extent permitted by law, on behalf of herself and other aggrieved
 5 employees who work or worked for Defendant in California at any time beginning April 7, 2021,
 6 through the resolution of this action and who are classified by Defendant as non-exempt from the wage
 7 and hour provisions of the California Labor Code.

8 150. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section 2699(c)
 9 and is a proper representative to bring a civil action on behalf of herself and other current and former
 10 employees of Defendants pursuant to the procedures specified in Labor Code section 2699.3(a) because
 11 Plaintiff was employed by Defendants and one or more Labor Code violations alleged herein was
 12 against her.

13 151. Pursuant to Labor Code §§ 118.12, 1194, 1197 and 1198, Defendants are and were
 14 required to compensate Plaintiff and aggrieved employees for all hours worked upon reporting for work
 15 at the appointed time stated by the employer. By failing to pay Plaintiff and aggrieved employees all
 16 minimum wages, Defendant has failed to comply with the Labor Code.

17 152. Pursuant to Labor Code § 510 and 1198 and the applicable Wage Order, Defendants
 18 were required to pay Plaintiff and aggrieved employees for all overtime worked at the correct rate,
 19 however failed to do so as a result of requiring Plaintiff and aggrieved employees to work off-the-clock
 20 and failed to pay overtime at the correct rate.

21 153. Pursuant to Labor Code §§ 200, 226.7, 512 and the applicable Wage Order, Defendants
 22 are required to provide Plaintiff and aggrieved employees with a meal period of not less than 30
 23 minutes after working five hours, and if an employer fails to provide a meal period, the employer shall
 24 pay the employee one (1) hour of pay at the employee’s regular rate of pay. Defendants have failed to
 25 provide mandated meal periods and have not provided pay in lieu of such meal breaks.

26 154. Pursuant to Labor Code §§ 200, 226.7, 512 and the applicable Wage Order, Defendants
 27 are required to provide Plaintiff and aggrieved employees with a ten-minute rest break per each four
 28 hours worked. As rest breaks were not provided, Defendants have failed to comply with the Labor

1 Code and applicable Wage Order.

2 155. Labor Code § 226 requires employers to make, keep and provide true, accurate and
 3 complete employment records. Defendants have failed to comply with the Labor Code as it
 4 intentionally provided Plaintiff and aggrieved employees with uniform, incomplete, inaccurate wage
 5 statements.

6 156. Defendant has failed to comply with Labor Code § 246 by failing to pay sick pay at
 7 employees' regular rate of pay.

8 157. Defendants willfully and knowingly failed to pay Plaintiff and aggrieved employees all
 9 accrued compensation within 72 of separation of employ in violation of California Labor Code § 203.

10 158. Labor Code § 204 requires that all wages earned by any person in any employment
 11 between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due
 12 upon termination of an employee, are due and payable between the 16th and the 26th day of the
 13 month during which the labor was performed, and that all wages earned by any person in any
 14 employment between the 16th and the last day, inclusive, of any calendar month, other than those
 15 wages due upon termination of an employee, are due and payable between the 1st and the 10th day
 16 of the following month. Labor Code section 204 also requires that all wages earned for labor in
 17 excess of the normal work period shall be paid no later than the payday for the next regular payroll
 18 period. Defendant failed to timely pay Plaintiff and aggrieved employees all wage during their
 19 employment with Defendant.

20 159. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil action, an
 21 aggrieved employee must first give notice by online filing with the LWDA and by certified mail to the
 22 employer of the alleged violations, including facts and theories to support the allegations. If the LWDA
 23 fails to investigate the alleged violations within 65 calendar days of the date of the notice, the aggrieved
 24 employee may then file a civil action to seek penalties.

25 160. On April 7, 2022, Plaintiff provided written notice of the violations alleged in this
 26 Complaint, including the facts and theories supporting her allegations, to the LWDA via online
 27 submission, with a certified copy mailed to Defendant. Accordingly, Plaintiff has satisfied the
 28 administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties

1 against Defendant for violations of California Labor Code identified in this Complaint.

2 161. Plaintiff and other aggrieved employees hereby seek civil penalties for the Labor Code
3 violations during the applicable limitations period described herein, in the following amounts:

4 a. For violations of California Labor Code sections 200, 203, 204, 227.3, 510, 512,
5 516, 1197, 1194, 1198, 246, \$100 for each aggrieved employee per pay period for
6 the initial violation and \$200 for each aggrieved employee per pay period for each
7 subsequent violation. Cal. Labor Code § 2699(f);

8 b. For violation of California Labor Code Section 226, \$250 per employee for an
9 initial violation and one thousand per employee for each subsequent violation. Cal.
10 Labor Code § 226.3.

11 Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and other aggrieved
12 employees, are entitled to an award of reasonable attorneys' fees and costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

15 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;

16 2. For an order that counsel for Plaintiff be appointed class counsel

17 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
18 Sub-Class;

19 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
20 Sub Class;

21 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
22 and disgorgement of all profits from the unlawful business practices of Defendant

23 6. An order appointing Plaintiff's counsel as class counsel;

24 7. Prejudgment and post judgment interest on all sums awarded;

25 8. For compensatory damages;

26 9. For penalties pursuant to Labor Code sections 2699, 200, 226, 226.7, 226.3;

27 10. For interest accrued to date;

28 11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699

1 (g) (1), 226 and 1194;

2 12. For reasonable attorneys' fees pursuant to Labor Code section 2699 (g) (1) 226 and
3 Code of Civil Procedure section 1021.5, and/or other applicable law; and

4 13. A declaratory judgment that Defendant has knowingly and intentionally violated the
5 following provisions of law;

- 6 a. Labor Code sections 510, 1198 for failing to pay overtime;
- 7 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for
8 failing to pay all wages;
- 9 c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide
10 compliant meal and rest breaks;
- 11 d. Labor Code sections 226, 1174 for failing to provide compliant wage
12 statements;
- 13 e. Labor Code sections 201 and 202 for failing to pay wages at
14 termination;
- 15 f. Labor Code sections 204 for failing to pay wages timely during
16 employment;
- 17 g. Labor Code section 246 for failing to pay sick pay wages at the
18 regular rate;
- 19 h. Business & Professions Code sections 17200-08 for violating the
20 provisions set forth herein above.

21 14. For all such other and further relief that the Court may deem just and proper.

22 DATED: October 27, 2022

**BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC**

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By: /s/ Kiley Grombacher

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Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.

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Attorneys for Plaintiff and others similarly
situuated

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: October 27, 2022

**BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC**

By: /s/ Kiley Grombacher

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
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